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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,443	09/17/2001	James Robert Adair JR.	17244-0129	6585

29052 7590 12/17/2003

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EXAMINER

TRUONG, THANH K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/954,443

Applicant(s)

ADAIR ET AL.

Examiner

Thanh K Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

**Period f r Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: in the Abstract, lines 1-2, "incorporating heat to technology" should be changed to -- incorporating heat tube technology --.

Appropriate correction is required.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "forming a portion control sized package" and "filling the portion control sized package" in claim 1, lines 6-7, must be shown or the feature(s) canceled from the claim(s); the "making portion control sized packaged" is a claimed feature of the present claimed invention, but there is no drawing to show how to control a portion sized package. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 9-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure to explain how to achieve the portion control package which is a claimed feature of the present claimed invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 9, 10, 12-19 and 21-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakamura et al. (6,301,859).

Nakamura discloses (figures 10, 11A & 11B) a system and a method for making portion control sized packaged comprising:

a heat sealable material feeder 13;

a flowable material feeder 1 for feeding a flowable liquid-containing material (column 1, lines 21-23, discloses that article M of a predetermined weight may be edible

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items such as potato chip, fruits, vegetables, or other things desired or required to be bagged; potato chip contains oil, fruits and vegetables contain liquid);

a form/fill/seal apparatus 2 structured and arranged for receiving the heat sealable material S, means 12 for forming a portion control sized package, means 1 for filling the portion control sized package, and means 15 for sealing the portion control sized package, the form/fill/seal apparatus including a heat seal die comprising:

a first and second die members 15 having longitudinal axis and die face;

a first and second heating elements 24;

a first and second longitudinal heat tubes 26 (a & b) disposed in the first and second die member between the heating element and the die face for maintaining a uniform heat seal temperature along the die face.

Nakamura et al. further discloses the longitudinal heat tube extends from the one end to the other end of the die member; and the heating element 24 is a heating cartridge disposed in a longitudinal bore 23 (a & b) in the die member; the die face of the first die member 15 has plurality of alternating longitudinal lands and grooves 19 and the second die member 15 has plurality of alternating longitudinal lands and grooves 19, the lands and grooves of the first and second die members are arranged for selective mating arrangement; the die member each has longitudinal sides and a raised portion and sloping walls; and the die member each has a temperature sensor 28 disposed in the downwardly facing longitudinal side.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (6,301,859).

As discussed above in paragraph 6 of this office action, Nakamura discloses the claimed invention, however, Nakamura does not expressly disclose that the portion size is in the range from 1 to 5 ounces.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to produce packages of portion size in the range of one desire, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claims 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (6,301,859).

As discussed above in paragraph 6 of this office action, Nakamura discloses the claimed invention, however, to the extent that Nakamura does not disclose a flowable liquid-containing material and condiments, the examiner takes a position that it is a well known practice in the art to package flowable liquid-containing material and condiments in a flexible packaging of thermoplastic film. The Applicant's disclosure, page 1, lines 9-

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13, paragraph 2 confirms that it is well known in the art to package fluid-containing material such as food product and condiments in a flexible packaging of thermoplastic film. Furthermore, Nakamura also discloses that the article M can be edible product such as fruits and vegetables or other things desired or required to be bagged in a a flexible packaging of thermoplastic film (column 1, lines 21-24).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Nakaruma's method to include flowable liquid-contianing material and condiments in a flexible packaging of thermoplastic film.

### ***Response to Arguments***

10. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

11. The Declarations under 37 CFR 1.132 filed October 6, 2003 is insufficient to overcome the rejection of claims 9-26 based upon Nakamura reference applied under 35 U.S.C. 103 set forth in the last Office action because: facts presented are not germane to the rejection at issue and the Declarations are moot in view of the new ground of rejection - the Nakamura reference applied under 35 U.S.C. 102 set forth in this Office action.

### ***Conclusion***


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Stephen F. Gerrity  
Primary Examiner

tkr  
December 8, 2003.